

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STATE OF NEW MEXICO ex rel.,
State Engineer,

Plaintiff, No. 69cv07941-BB-ACE
-vs- RIO CHAMA STREAM SYSTEM
ROMAN ARAGON, et al., Section 7
Subfile(s) CHRU 004-0044A

Defendants.

MOTION FOR RULE 11 SANCTIONS

Peter B. Shoenfeld, on behalf of Steven Padilla, Timothy Andrews and Dianna Andrews, moves for sanctions against HENRY COORS and his attorney WILLIAM REARDON as follows:

False Assertion of Fact No. 1

1. This Court previously set a deadline in July, 2004, for making claims of water rights which had been omitted from the adjudication process.

2. On or about July 15, 2004, on behalf of Steve Padilla, Timothy Andrews, Dianna Andrews, and Kenneth Luhcs¹, undersigned counsel made claims (Docs. Nos. 7514, 7515, and 7516) respecting the water rights appurtenant to their properties located in Rio Arriba County, asserting water rights appurtenant to approximately 3.5 acres within tract CHRU 004-0044A, (the subject matter of subfile No. CHRU 004-0044A herein (hereinafter "the water rights")). Copies of the claims were mailed to Mr. and Mrs.

¹Mr. Luhcs no longer claims the water rights, having disposed of his interest therein to Mr. and Mrs. Andrews.

Coors.

3. Because of conflicting claims respecting the identity or identities of the proper parties to prosecute and/or defend claims with respect to the water rights, the Special Master, Ms. Gabin, set a F. R. Civ. P. 16 scheduling conference for September 20, 2004, in order to schedule such proceedings as were necessary or desirable to determine the issues created by the claims of Mr., Mrs. Andrews, Mr. Padilla, Mr. Luhcs, and the hydrographic survey which reflected Mr. Coors' interest in the water rights.

4. Mr. Coors, on August 8, 2002, signed a waiver of service of summons herein, giving as his address 163 Rainbow Dr. #6313, Livingston, Texas 77399-1063, and the Plaintiff certified the waiver to the Court on September 3, 2002, (Doc. No. 6837).

5. On September 7, 2004, Ms. Gabin mailed a copy of the original order setting the September 20, 2004, scheduling conference (Doc. No. 7583) to Mr. Coors, at the address set forth in Mr. Coors waiver of service of summons. On September 14, 2004, Ms. Gabin issued and mailed to Mr. Coors at the same address, an amended order (Doc. No. 7587) for the September 20, 2004, scheduling conference. Ms. Gabin's certificate of mailing (Doc. No. 7595) stated:

* * *
the defendants whose water rights claims are at issue for this proceeding are:
Steve A. Padilla

Kenneth E. Luhcs
Dianna Andrews and Timothy Andrews

* * *

Henry Coors (pro se)

* * *

This scheduling conference involves only the water rights claims of the individuals listed above.

6. On September 20, 2004, the Special Master conducted a scheduling conference pursuant to the notice referred to above.

7. Mr. Coors failed to attend the September 20, 2004, scheduling conference, either by representative or in person. Thereupon Ms. Gabin instructed counsel for Plaintiff, Mr. Newville, to seek Mr. Coors' default.

8. Mr. Newville moved for default against Mr. Coors, mailing a copy of the motion (Doc. No. 7611) to Mr. Coors at the address given in his waiver of service, 163 Rainbow Dr. #6313, Livingston, Texas 77399-1063. Mr. Newville's certificate of mailing is Doc. No. 7614.

9. The motion for default stated, among other things:

4. Several of the landowners in the area mapped under subfile CHRU-004-0044 have filed a Claim of Water Rights claiming ownership of portions of the 7.3 acres of water rights described in subfile CHRU-004-0044. See Claim of Water Rights of Steve Padilla filed July 15, 2004 (Doc. No. 7514; Claim of Water Rights of Dianna & Timothy Andrews filed July 15, 2004 (Doc. No. 7515); Claim of Water Rights of Kenneth E. Luhcs filed July 15, 2004 (Doc. No. 7516).

5. By Order filed September 7, 2004 (Doc. No. 7583), and Amended Order filed September 13, 2004 (doc. No. 7587), Mr. Coors was required to attend a scheduling conference on September 20, 2004, together with the claimants listed in paragraph 4 above, for the purpose of entering a scheduling order under F. R. Civ. P. 16

to determine any competing claims to the irrigation water rights described in subfile CHRU-004-0044. The two Orders informed the defendants that the failure of a water rights claimant to appear either in person or by counsel may result in the dismissal of their claim or any other relief appropriate under the circumstances.

10. Mr. Coors failed to respond to the motion for default judgment, and default was taken against him.

11. Mr. Coors is a member of the bar of this Court.

12. Notwithstanding the copy of the claim given by counsel for Padilla, Andrews and Luhcs to Mr. Coors, notwithstanding the notice given by Ms. Gabin to Mr. Coors, and notwithstanding the contents of the motion served by Mr. Newville upon Mr. Coors, Mr. Coors asserted in his affidavit filed in support of his motion to set aside the default against him, that:

13. Henry G. Coors was not aware that anyone claimed an interest in the water rights, which were part of the water rights, which he acquired in 1988, and no one in this or any proceeding before the State Engineer gave Henry G. Coors notice of their adverse interest or claim in these water rights.

False Assertion of Fact No. 2

13. In his motion (No. 7901) to set aside the default herein, filed on May 20, 2005, Mr. Coors, acting through his attorney, Mr. Reardon, asserted that:

5. Petitioner transferred 10 acre feet of corruptive (sic) use water rights to the Rutherford Water Association to provide property within his previously owned lands with domestic water.

and

6. After a hearing from before (sic) the State Engineer, Petitioner was allowed to transfer 10 acre feet to the Rutherford Water Association and Petitioner executed and recorded a deed for said 10 acre feet of water rights to the Rutherford Water Association.

14. The assertions set forth by Mr. Coors and his counsel in paragraphs 5 and 6 of the motion to set aside the default judgment, as quoted in paragraph 13, supra, were patently and clearly false. On January 25, 2005, the State Engineer, without hearing, had denied Mr. Coors' application, No. 1545 and 1699 into 4656, stamping it "DENIED" on each page of the application, as shown in Exhibit 1, and notified him of that denial by certified mail, return receipt requested, as shown in Exhibit 2.

15. Mr. Coors' application never went to hearing, contrary to his assertion in paragraph 6 of his motion. He received and, by his letter of aggrieval to the State Engineer, dated March 10, 2005, acknowledged the denial of his application on February 25, 2005. A true copy of Mr. Coors' letter of March 10, 2005, is submitted herewith as Exhibit 3. In his letter of aggrieval, and in apparent compliance with applicable statutes and the State Engineer's administrative practice, he requested a hearing from the State Engineer, but that request was never granted, and as counsel is informed and believes, it remains pending.

16. The State Engineer's notice of denial of Mr. Coors' application No. 1545 and 1699 into 4656 (Exhibit 2) states as the reason for the denial of the application:

Pursuant to an Order Granting Motion for Default Judgment filed October 11, 2004 (Docket No. 7611) by the United States District Court for the District of New Mexico, Henry Coors has no interest in the irrigation water rights described in Subfile CHRU-004-0044 (move-from lands) of the Rutherford Section of the Rio Chama Hydrographic Survey (See attached Order).

17. Mr. Coors' and Mr. Reardon's assertions as set forth above violate the provisions of F. R. Civ. P. 11(b)(3).

WHEREFORE, Defendants Padilla and Andrews respectfully request that sanctions as determined by the Court be imposed against Mr. Coors and Mr. Reardon pursuant to F. R. Civ. P. 11(c)², and that they have such other and further relief to which they are entitled.

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By: S/Peter B. Shoenfeld (e-filed)
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and Padilla

Certificate of Service

I certify that on June 14, 2005, I served a copy of the foregoing on the following by mail, except those indicated with a "*" who I served by hand-delivery.

Bradley S. Bridgewater
David W. Gehlert

USDOJ-ENRD
999 18th Street, Suite 945

²The Movants in their Response (Doc. No. 7909) to Mr. Coors' motion to set aside the default have sought sanctions against Mr. Coors under F.R.Civ.P. 16 for failure to participate in the scheduling conference referred to herein, and do not seek the same sanction in this motion as they requested in that document, but believe that the sanctions under F.R.Civ.P. 11 should be imposed in addition to the Rule 16 Sanctions.

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